

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RICARDO VELASQUEZ,
Plaintiff,

-v-

SOHO GARDEN, INC., *et al.*,
Defendants.

24-CV-2240 (JPO)

ORDER

J. PAUL OETKEN, District Judge:

On March 25, 2024, Plaintiff Ricardo Velasquez filed this action against Defendants Soho Garden, Inc. and D.K. Property Inc. (ECF No. 1.) Plaintiff served Defendants on April 16, 2024, and a response from each Defendant was due by May 7, 2024. (ECF Nos. 7, 8.) Defendants have not entered an appearance, nor have they filed any response to the complaint. Accordingly, on May 28, 2024, the Court ordered Plaintiff to either file a letter concerning the status of the case or move for default judgment against Defendants. (ECF No. 9.) The Court warned Plaintiff that if he failed to take either action by June 18, 2024, the action may be dismissed for failure to prosecute. (*Id.*) Plaintiff has not taken any responsive action since the Court's order.

Federal Rule of Civil Procedure 41(b) authorizes a district court to dismiss an action “if the plaintiff fails to prosecute or to comply with the rules or a court order.” *Baptiste v. Sommers*, 768 F.3d 212, 216 (2d Cir. 2014). It is settled that Rule 41(b) “gives the district court authority to dismiss a plaintiff’s case *sua sponte* for failure to prosecute.” *LeSane v. Hall’s Sec. Analyst, Inc.*, 239 F.3d 206, 209 (2d Cir. 2001). Dismissal without prejudice is appropriate here. Plaintiff was “given notice that further delay would result in dismissal,” *U.S. ex rel. Drake v. Norden Sys., Inc.*, 375 F.3d 248, 254 (2d Cir. 2004), and there is prejudice where Plaintiff has caused an

“unreasonable delay.” *LeSane*, 239 F.3d at 210. Dismissal without prejudice appropriately strikes a balance “between alleviating court calendar congestion and protecting a party’s right to due process and a fair chance to be heard.” *Id.* at 209.

Accordingly, this action is dismissed without prejudice to refiling.

The Clerk of Court is directed to close this case.

SO ORDERED.

Dated: June 20, 2024
New York, New York



J. PAUL OETKEN
United States District Judge